

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2017-292-WS**

**Application of Carolina Water Service,  
Incorporated for Approval of an Increase in  
Its Rates for Water and Sewer Services**

**REHEARING  
REBUTTAL TESTIMONY  
OF KEITH M. BABCOCK**

1    **Q.    WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2    **A.**    The purpose of my testimony is to respond to testimony given by Steven W. Hamm,  
3    Esquire, for the Office of Regulatory Staff concerning the litigation that gave rise to the expenses  
4    Carolina Water Service (“CWS”) seeks to recover in this case.

5    **Q.    ORS WITNESS HAMM CONTENDS THAT CWS’S DEFENSE OF THE**  
6    **CONGAREE RIVERKEEPER’S LAWSUIT WAS NOT UNDERTAKEN TO ADVANCE**  
7    **THE INTERSTS OF THE RATEPAYERS, DO YOU AGREE?**

8    **A.**    No, I do not. Mr. Hamm characterizes the lawsuit as if it were merely brought to punish  
9    CWS for effluent limitation violations. In fact, the CRK’s suit primarily sought an injunction  
10   forcing CWS to connect the I-20 System with the Town of Lexington<sup>1</sup>, a connection which was  
11   not available to the Company.

12        The only way CWS could absolve itself of ongoing liability, according to the Riverkeeper,  
13   was to connect its system with the Town of Lexington through a bulk service agreement, by selling  
14   the system, or ceasing to provide service. If interconnection, sale, or acquisition through

---

<sup>1</sup> Congaree Riverkeeper, Inc. v. Carolina Water Service, Inc. C/A No. 3:15-194-MBS at p. 1 (Dist. S.C. March 30, 2017) (citations to the record have been omitted from the quotations).

1 condemnation were not available (and they were not) CWS ultimately would have to terminate  
2 sewer service to more than 2,000 customers. Obviously, such a result would have been a disaster.

3 One only need look to the Federal Court's findings on summary judgment to understand  
4 the Company was litigating to preserve the ability to serve its customers.

5 As to the possibility of a connection, the Court found:

6 "On March 21, 2014, Defendant initiated negotiations with Town  
7 regarding a possible connection to the regional system. On May 8,  
8 2014, Town responded that it was not interested in an  
9 interconnection at the time."<sup>2</sup>

10  
11 And:

12 "On September 9, 2015, Defendant sent Town a letter requesting  
13 interconnection on the terms set forth in the September 3, 2015,  
14 application [to the Public Service Commission, requesting approval  
15 of an interconnection]. Town declined any interest in an  
16 interconnection agreement as the terms did not accurately reflect  
17 current costs. Town indicated a continued interest in acquisition of  
18 the I-20 Plant, but only if Defendant agreed to pay a portion of  
19 Town's due diligence. Defendant responded that it was not  
20 interested in such an agreement."<sup>3</sup>

21  
22 The Court's findings explained why the Town would not make an interconnection  
23 available:

24 "In August 2009, the City of Cayce, Town, and the Lexington  
25 County Joint Municipal Water and Sewer Commission entered into  
26 a contract to expand the capacity of the Cayce regional treatment  
27 plant. The construction of the expansion was financed through  
28 issuance of tax-exempt bonds with restrictive covenants designed to  
29 preserve the bonds' tax-exempt status. One condition is a restriction  
30 on the amount of wastewater from "Private Business Use" that can  
31 be treated. "Private Business Use" includes a private utility like the  
32 I-20 Plant. Town covenanted that it would not enter into any contract  
33 or agreement for sale of its wastewater services or allocated capacity  
34 that constitutes a "Private Business Use." If Town contracted with  
35 another party for activity that constituting "Private Business Use,"

---

<sup>2</sup> Id. at p. 7.

<sup>3</sup> Id. at pp. 8-9.

1 the contract “may cause the interest on [b]onds to be included in the  
2 gross income of the holders,” thereby, extinguishing the bonds’ tax-  
3 exempt status.”<sup>4</sup>

4  
5 In other words, the Town had contractually obligated itself not to interconnect. The Town would  
6 only inform CWS of this impairment six years later:

7 “On November 10, 2015, South Carolina Office of Regulatory Staff  
8 organized a meeting to facilitate negotiations between Defendant  
9 and Town. At this meeting, Town’s limiting contractual and bond  
10 covenants were discussed.”<sup>5</sup>

11  
12 As to the possibility of selling the system, the Court found:

13 “On July 31, 2014, Defendant and Town entered into a  
14 confidentiality agreement to negotiate a sale of the I-20 Plant. Town  
15 was interested in acquisition of the I-20 Plant only if it also acquired  
16 another facility owned by Defendant, the Watergate system. Before  
17 engaging in further negotiations Defendant requested a non-binding  
18 letter “indicating that a \$13.5 Million price is within a reasonable  
19 range of value that the Town would be willing to consider paying.”  
20 Town declined to enter into a non-binding letter of agreement,  
21 stating it was unable to determine if that price was within a  
22 reasonable range without other information. Defendant provided  
23 Town with maps of the system, as requested. In December 2014,  
24 Defendant provided Town with additional information on the  
25 number of customers, yearly revenue, yearly costs, and other data.  
26 Town did not respond to Defendant about the proposed price and  
27 did not make an offer for the systems.”<sup>6</sup>

28  
29 So, the Town of Lexington would only consider purchasing the system in a “package deal”  
30 with another one of CWS’s systems, and when CWS agreed to negotiate for the sale of the two  
31 systems, the Town still did not make an offer.

---

4 Id. at pp. 6-7.

5 Id. at p. 9.

6 Id. at pp. 7-8 (emphasis added)

1           Ultimately, the Court found liability because it found the terms of CWS's NPDES permit  
2   to required the Company to make a connection with the Town of Lexington if it was "physically  
3   available" even if it was not "contractually available".<sup>7</sup>

4   **Q.     DO YOU AGREE WITH MR. HAMM'S ASSERTIONS THAT CWS IS ASKING**  
5   **TO RECOVER THE COSTS IT DID NOT "PREVAIL ON ITS DEFENSE OF THE**  
6   **EFFLUENT DISCHARGE CLAIMS" AND THOSE COSTS WERE "INCURRED TO**  
7   **DEFEND OR REDUCE PENALITES LEVIED AGAINST CWS"?**

8   **A.**     CWS's past effluent discharge exceedances were a secondary component of the litigation.  
9   As the Federal Court explained: "The gravamen of the case was what the NPDES permit required  
10   Defendant to do" *i.e.* connect its system to the Town of Lexington.<sup>8</sup> Also, the litigation costs  
11   incurred by CWS pertain to the liability phase of the trial. As the Court acknowledged when it  
12   vacated the penalty it had imposed in its summary judgement order, "the parties essentially agreed  
13   at the summary judgment hearing that discovery and argument on the fine amount would be  
14   appropriate, the court vacates the \$1,500,000 amount and will hold a hearing on the appropriate  
15   penalty for violation of the NPDES permit."<sup>9</sup> Only the Court's \$23,000 fine for NPDES permit  
16   exceedances remained in place. CWS will have the right to appeal them when a final order is  
17   issued in this case.

---

<sup>7</sup>     Id at p. 26.

<sup>8</sup>     Congaree Riverkeeper, Inc. v. Carolina Water Service, Inc. C/A No. 3:15-194-MBS (Dist. S.C. March 26, 2018) at p.4.

<sup>9</sup>     Id. at p. 10.

1   **Q.     DO YOU AGREE WITH MR. HAMM THAT THIS LITIGATION WAS NOT**  
2   **UNDERTAKEN FOR THE BENEFIT OF CWS'S CUSTOMERS?**

3   **A.**     No. The Riverkeeper argued, and the Court agreed, that CWS's liability arose from the  
4   availability of a physical connection, whether it was contractually available or not. I do not see  
5   what choice CWS had if it was going to continue providing service to its customers.